

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

KENNETH MOLLETT,
TDCJ-CID # 629054,

Plaintiff,

v.

DIRECTOR BILL PIERCE, et al.,

Defendants.

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CIVIL ACTION NO. V-05-031

MEMORANDUM AND ORDER GRANTING MOTION TO DISMISS

This court previously granted the plaintiff's motion to proceed *in forma pauperis* and ordered him to pay the filing fee pursuant to the provisions of the Prison Litigation Reform Act. The plaintiff has filed a motion to dismiss under FED.R.CIV.P. 41(a) because he does not want to pay the fee. The courts have generally granted dismissal unless the defendant would suffer some plain legal prejudice other than the mere prospect of a second lawsuit. *Manshack v. Southwestern Elec. Power Co.*, 915 F.2d 172, 174 (5th Cir. 1990). No such prejudice has been shown in the instant case.

Moreover, a plaintiff has an absolute right to have a case dismissed if he files a notice of dismissal at any time before the adverse party serves an answer or a motion for summary judgment. FED.R.CIV.P. 41(a)(1); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997); *Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977). In the present action, the defendants have not been served and the plaintiff's allegations have not been fully established.

Plaintiff's motion to dismiss (Docket Entry No. 8) is **GRANTED**, and this case is **DISMISSED** without prejudice. The TDCJ-CID officials administering plaintiff's trust fund

accounts shall cease all withholding and payment of the filing fee in this action. Any funds currently being held by the TDCJ-CID officials for future payment to the United States District Clerk regarding the filing fees in this action shall be returned to the plaintiff. Those funds which have already been paid to the Clerk shall not be refunded.

The Clerk shall provide copies of this memorandum and order to the parties; the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, Fax Number (512) 936-2159; and the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax number (936) 293-4197.

SIGNED on this 1st day of June, 2006.



JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

